90-197

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

MAHINDER S. UBEROI, *Petitioner*

v.

MURRAY RICHTEL, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MAHINDER S. UBEROI, *pro se*
819 Sixth Street
Boulder, CO 80302
(303) 442-2879

July 10, 1990

QUESTIONS PRESENTED

1. Whether Court of Appeals was required to reverse District Court's dismissal of petitioner's meritorious civil rights claims against respondent state trial judge, because the record established that respondent fraudulently prevailed that the case is moot, claiming he has permanently moved from mostly civil to exclusively criminal docket and petitioner's pending or future civil cases will not come before him, while in fact, he is a judge of state district court of general jurisdiction and cannot be permanently or exclusively confined to criminal docket and is periodically rotated between mostly civil and mostly criminal dockets and one of petitioner's civil cases did come before him?

2. Whether petitioner's claim for damages can be maintained against respondent state judge for his seizure of petitioner's privileged documents, District Court having ruled that petitioner had stated a meritorious claim for injunctive relief under IV Amend.?

3. Whether U.S. Const. Art. IV, §4, I and XIV Amends. provide petitioner any relief against respondent state trial judge who refuses to enforce Colorado Open Records Act for petitioner's benefit and against University of Colorado since "this statute wreaks real havoc in the academic context...if the legislature were aware of the real problem this statute causes for the University it would probably change the statute," and otherwise denied petitioner meaningful access to the state trial court?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases Page

Statutes

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

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v.

MURRAY RICHTEL, ***Respondent***

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The petitioner, Mahinder S. Uberoi, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit, entered in the above proceeding on February 7, 1990, rehearing denied on March 14, 1990.

OPINIONS BELOW

The opinion of the Court of Appeals for the Tenth Circuit has not been reported. It is reprinted in the appendix hereto, p. 1a, *infra*.

The decision of the United States District Court for the District of Colorado is reprinted in the appendix hereto, p. 5a, *infra*.

JURISDICTION

On June 29, 1987, invoking federal jurisdiction under 28 U.S.C. §§1331, 1343, 2201, and 2202 and F.R.Civ.P. 57, petitioner brought this suit, in the district for Colorado, for damages and declaratory and injunctive relief under 42 U.S.C. §§1981, 1983, and 1988; U.S. Constitution Art. IV, §4; Amends. I, IV and XIV.

On May 19, 1989, the district court dismissed with prejudice the action since it had become moot, each side to pay its own costs and attorney's fees. On February 7, 1990, the Tenth Circuit affirmed and on March 14, 1990, denied rehearing.

The jurisdiction of this Court to review the judgment of the Tenth Circuit is invoked under 28 U.S.C. §1241(1). On June 4, 1990, Justice White granted extension up to July 12, 1990, in which to file a petition for a writ of certiorari. Application No. A-860.

CONSTITUTIONAL PROVISIONS INVOLVED

Article IV, §4; Article VI, §3, Amendments I, IV, and XIV.

STATEMENT OF THE CASE

Petitioner, Mahinder S. Uberoi, is a male of Asian Indian Origin and citizen of the U.S. Respondent, Murray Richtel, is a Colorado state trial judge who was assigned *Uberoi v. University of Colorado Board of Regents, et al.*, Boulder County, Colorado, District Court, 85 CV 2080, and violated petitioner's civil rights.

In the federal complaint filed on June 29, 1987, petitioner alleged that in the state complaint, 85 CV 2080, he stated, *inter alia*, that he was a tenured professor at University of Michigan when University of Colorado enticed him to become tenured professor and chairman of Department of Aerospace Engineering at the highest salary and with numerous promises about his own academic and salary advancements, and promises of an affirmative policy to hire women, racial and ethnic minorities; and

that instead, the University *et al.*, conspired to create discriminatory conditions of employment and work for petitioner, and his associates and students who were minorities and/or women; and

that, because petitioner had previously filed a civil rights suit against them, they retaliated by denying access to public records, in violation of Colorado Open Records Law, which petitioner had used to expose their immoral and illegal acts.

Pursuant to C.R.S. §24-72-204(5), respondent held a hearing for the University *et al.*, to show cause why they should not permit petitioner to inspect the records in question. He ruled that they had illegally denied access, and they shall permit access to 9 out of 10 sets

of records in question. Both sides moved for reconsideration. He ruled:

> My sense is that this statute wreaks real havoc in the academic context of the University of Colorado... I believe that if the legislature were aware of the real problems this statute causes for the University it would probably change the statute...
> They simply amended the statute [C.R.S. §24-72-202(1.5)] in response to Plaintiff's case in the Supreme Court to include the University as an institution... [*Uberoi v. University of Colorado*, 686 P.2d 785 (Colo. 1984)].
> I just don't think the legislature would have passed it had it thought about it as far as the impact on the university... So I'm not going to consider either side's motion [for reconsideration].
> I'm going to grant a stay on [the] judgment...at least until the parties have sought a writ from the Supreme Court.

The Colorado Supreme Court denied petitioner's request for a writ, as expected, since it has no authority to suspend a constitutionally firm statute because it displeases a state trial judge. In spite of the federal complaint, respondent never lifted the stay which continued by its own terms. On January 1, 1988, he was rotated from mostly civil to mostly criminal docket.

In the federal complaint, petitioner further alleged that respondent seized petitioner's privileged documents while he was addressing the state court from the lectern, destroyed or refused to prevent destruction of exhibits admitted into evidence, required petitioner to file copies of all non-Colorado authorities cited by him since the court library has been replaced by WESTLAW computerized research, and otherwise denied meaningful access to the court and that respondent's conduct was wilfully unlawful and racially motivated.

CLAIMS AND THEIR DISPOSITION BY DISTRICT COURT

The amended complaint asserts 7 claims.

Claim I asserts that respondent's refusal to enforce Colorado Open Records Law violates petitioner's rights under U.S. Const. Art. IV, §4, the guarantee of a republican form of government whereby state

courts are required to enforce legitimate legislative enactments.

Claim II incorporates Claim I and asserts that respondent's refusal to enforce the statute, his seizure of papers, his baseless reprimand not to bother his staff and the order of indefinite stay were racially motivated and violated petitioner's rights under 42 U.S.C. §1981 and XIV Amend.

Claim III incorporates Claims I and II and asserts that respondent's indefinite stay of his judgment on the order to show cause was willfully calculated to deny petitioner's right to appeal the judgment and violated his rights under 42 U.S.C. §1981 and XIV Amend.

Claim IV incorporates Claims I through III and asserts that respondent's unauthorized seizure of papers violated petitioner's rights under IV Amend.

Claim V incorporates Claims I through IV and asserts that respondent's order for filing of all non-Colorado authorities was racially motivated, unnecessary, burdensome and a harassment and violated petitioner's rights under 42 U.S.C. §1981 and XIV Amend.

Claim VI incorporates Claims I through V and asserts that respondent's conduct prevented petitioner from pursuing his other civil rights claims in the state court and violated his rights under 42 U.S.C. §1981 and XIV Amend.

Claim VII incorporates Claims I through VI and asserts that respondent's conduct denied meaningful access to the Boulder Court and violated petitioner's rights under I Amend.

On respondent's motion, the district court dismissed all claims except Claim IV of seizure and part of Claim II based on racial animus, since they involved review of state court judgment for which a federal district court lacks jurisdiction, and the claims, as alleged, cannot be maintained under U.S. Const. Art IV, §4, I and XIV Amends. It also dismissed claim for damages for unauthorized seizure of papers containing privileged information since respondent enjoys judicial immunity.

District Court granted leave to further amend the complaint.

Claim VIII incorporates Claims I through VII and asserts that respondent's failure to instruct the court staff to preserve evidence, for appellate review of his final judgment, violated Uberoi's rights under 42 U.S.C. §1981, I and XIV Amendments.

Claim IX incorporates Claims I through VIII and asserts that respondent's direction to court staff to destroy sealed evidence in the

ongoing case violated petitioner's rights under 42 U.S.C. §1981, I and XIV Amendments.

On January 1, 1988, respondent was rotated from mostly civil to mostly criminal docket. He moved to dismiss since the case is moot, fraudulently claiming that he has permanently moved from mostly civil to exclusively criminal docket and petitioner's pending or future civil cases will not come before him.

Petitioner asserted that respondent and other judges are periodically rotated between mostly civil to mostly criminal dockets, he is a judge of state district court of general jurisdiction and cannot be permanently and exclusively confined to criminal docket, and the case is not moot since it involves issues "capable of repetition yet evading review," citing *Southern Pacific Terminal Co. v. I.C.C.*, 219 U.S. 498 (1911) and *Roe v. Wade*, 410 U.S. 113 (1973).

The district court dismissed the case as moot since "defendant is no longer a civil [sic] judge and any possibility that the plaintiff will have to make an appearance in front of the defendant in the future is speculative at best." P. 6a *infra*.

According to the established procedure of the state court, respondent was rotated back to mostly civil docket and one of petitioner's cases did come before him.

PROCEEDINGS IN COURT OF APPEALS FOR X CIRCUIT

On February 7, 1990, the Court of Appeals for the Tenth Circuit affirmed for "substantially the reasons stated in the [trial court's] orders." On March 14, 1990, it denied rehearing.

REASONS FOR GRANTING THE WRIT

I

THE COURT OF APPEALS WAS REQUIRED TO REVERSE THE DISMISSAL BECAUSE RECORD ESTABLISHES THAT RESPONDENT FRAUDULENTLY CLAIMED THE CASE IS MOOT.

The record establishes that respondent is a judge of District Court for Boulder County, Colorado, which is a court of general jurisdiction. Respondent cannot be confined exclusively and permanently to the criminal docket. According to established procedure in that particular state court, the judges are periodically rotated between mostly civil and mostly criminal dockets. Respondent successfully moved the district court to dismiss meritorious claims against him because the case is moot. He fraudulently stated to the court that he has permanently moved from mostly civil to exclusively criminal docket and petitioner's pending or future civil cases will not come before him.

> Willful abuse of legal process such as...obtaining court order by fraud or deceit...is contempt. [Citations omitted. 17 C.J.S. Contempt § 10, p. 22.]

There is nothing moot about the meritorious claims against respondent. He was sued because he violated petitioner's civil rights under the color of law as a trial judge of a state court of general jurisdiction and has always continued to occupy that position. He cannot avoid the federal constitution by quickfooting from one docket to another within the same court.

Assuming, *arguendo*, that meritorious claims against respondent

became moot when he was rotated from mostly civil to mostly criminal docket, the case presents issues "capable of repetition yet evading review." See *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U.S. 498 (1911); *Roe v. Wade*, 410 U.S. 113 (1973).

Respondent avoids these authorities by fraudulently claiming that he has *permanently* moved to exclusively criminal docket, while he knew with absolute certainty that he will be rotated from mostly criminal to mostly civil docket. This happened and one of petitioner's civil cases came before respondent.

II

RESPONDENT STATE JUDGE'S SEIZURE OF PETITIONER'S PRIVILEGED DOCUMENTS, IN VIOLATION OF AMEND. IV, IS NOT A JUDICIAL ACT AND IS SUBJECT TO CLAIMS FOR DAMAGES.

Stump v. Sparkman, 435 U.S. 349, (1978) held that judicial officials are immune from suits for damages for their judicial actions. However, the court noted that a judicial official may be sued for damages for his non judicial acts.

> The Court of Appeals for the Ninth Circuit, for example, has held that a justice of the peace who was accused of forcibly removing a man from his court room and physically assaulting him was not absolutely immune. *Gregory v. Thompson*, 500 F.2d 59(1974). While the court recognized that a judge has the duty to maintain order in his courtroom, it concluded that the actual eviction of someone from the courtroom by the use of physical force, a task normally performed by sheriff or bailiff, was 'simply not an act of judicial nature,' Id., at 64.
>
> *Stump* Court at 362 held:
>
> The relevant cases demonstrate that the factors determining whether an act by a judge is "judicial" relate to: (1) the nature of the act itself, i.e., whether it is a function normally performed by a judge, and (2) to the expectation of the parties.

We now apply the two criteria to the case at hand.

(1) The judges are not normally called upon to seize privileged documents from a litigant addressing the court from the lectern. On the contrary, they are forbidden to do so. See *In Re Federal Skywalk Cases*, 95 F.R.D. 477(1982).

(2) A party has a legitimate expectation of confidentiality in papers he has used in preparation of his case, in opposition to those he actually puts before the court.

III

U.S. CONST. ART. IV, §4, ART. VI, §3, I AND XIV AMENDS. REQUIRE A STATE JUDGE TO ENFORCE A STATUTE WHICH IS VALID UNDER STATE AND FEDERAL CONSTITUTIONS, EVEN IF IT DISPLEASES HIM

Respondent state judge has taken oath under Art. VI, §3 to support the federal constitution.

> A guarantee by the national authority would be as much leveled against *usurpation of rulers* as against the ferments and outrages of faction and sedition in the community. Hamilton in Federalist, No. XXI. Emphasis added.
>
> The United States shall guarantee to every state in this Union a republican form of government... U.S. Const. Art. IV, §4.
>
> By the Constitution, a republican form of government is a guarantee to every state in the Union, and the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves. *In Re Duncan*, 139 U.S. 449, 461(1891).
>
> Purpose of this clause which guarantees to every state a republican form of government is to protect the people against aristocratic and monarchial innovations, and...to prevent them from abolishing a republican form of government. *Van Sickle v. Shanahan*, 511 P.2d 223 (Kan. 1973).
>
> School directors threatened with force to compel recision of their desegregation order were entitled to invoke, inter alia, this clause

> guaranteeing republican form of government, and appeal to federal courts for protection. *Hoxie School Dist. No. 46 of Lawrence County, Ark. v. Brewer*, 137 F. Supp. 364 (D.C. Ark. 1956), affirmed 238 F.2d 91.

Respondent has clearly usurped powers of Colorado legislature and denied the people of Colorado and petitioner, a person of Asian Indian origin, to lobby the legislature to have the Open Records Act specifically amended to apply it to the University of Colorado, by refusing to enforce it. Petitioner is entitled to declarative and injunctive relief under Art. IV, §4. He is also entitled to such relief under I and XIV Amendments, 42 U.S.C. §1981 and §1983, the right to petition the government through courts and equal protection and due process of law.

IV

RESPONDENT'S ACTIONS UNCONSTITUTIONALLY HANDICAP PETITIONER'S RIGHT OF ACCESS TO THE COURT

Access to the courts is protected by I and XIV Amendment rights to petition the courts and equal protection and due process of law, *N.A.A.C.P. v. Button*, 371 U.S. 415, 429-430 (1963); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508; *Wilson v. Thompson*, 593 F.2d 1375, 1381 (5th Cir. 1979); *Pizzolato v. Perez*, 524 F.Supp. 914, 921 (1981).

Furthermore, the court in *N.A.A.C.P.* held at 430:

> And under the condition of modern government, litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances.

In *N.A.A.C.P., Brotherhood of Railroad Trainmen v. Virginia Bar*, 377 U.S. 1(1964); *United Mine Workers v. Illinois Bar Association*, 389 U.S. 217(1967); and *United Transportation Union v. State Bar of Michigan*, 401 U.S. 576(1971), the court held that a state cannot prohibit individuals from getting help from associations to litigate their grievances in courts and that *a more direct means to handicap*

a litigant's rights to petition the courts is, of course, prohibited.

Respondent's refusal to enforce Colorado Open Records Act. C.R.S. 24-72-201 *et seq.*, his seizure of petitioner's papers containing privileged information, his baseless accusation that petitioner had bothered his staff, the indefinite stay of his order and the destruction of or the failure to prevent destruction of evidence unconstitutionally handicap petitioner's right to petition the state courts.

In the case in the state court, petitioner sought, *inter alia*, to vindicate his federal civil rights. The state court is *required* to entertain such a complaint. The court in *Martinez v. California*, 444 U.S. 277, 283, n 7 held that:

> We have never considered, however, the question whether a state *must* entertain a claim under §1983. We note that where the same type of claim, if arising under state law, would be enforced in the state courts, the state courts are generally not free to refuse enforcement of the federal claim. [Emphasis in the original.]

Respondent's order requiring petitioner to file copies of any non-Colorado authority has a chilling effect on his ability to maintain his federal civil rights claims in the state court.

V

THE RELIEF SOUGHT IN FEDERAL DISTRICT COURT DOES NOT INVOLVE REVIEW OF STATE COURT'S JUDGMENT ON THE MERITS AND IS UNAFFECTED BY RESPONDENT'S ROTATION FROM ONE DOCKET TO ANOTHER WITHIN THE SAME STATE COURT.

District court dismissed I, III, V, VI, and VII claims since, *inter alia*, it is well settled that federal district courts are without authority to review state court judgments where the relief sought is in the nature of appellate review. *Anderson v. State of Colorado*, 793 F.2d 262, 263 (10th Cir. 1986).

Petitioner is not seeking an appellate review of respondent's judgment on the merits but his refusal to enforce a constitutionally firm statute since,

> I believe that if the legislature were aware of the real problem it causes for the University, it would probably change the statute... I just don't think the legislature would have passed it had it thought about it as far as impact on the University...

Petitioner believes that this is a case of first impression where a judge has refused to enforce a statute since the legislature would change it after hearing about the trial judge's superior authority and wisdom, and that by an indefinite stay, "at least until the parties have sought a writ from the [Colorado] Supreme Court." The stay is itself unconstitutional.

> The stay is immoderate and hence unlawful unless so framed in its inception that its force will be spent within reasonable limits, so far at least they are susceptible of provision and description. When once these limits have been reached, the fetters should fall off. To put the thought in other terms, an order which is to continue by its terms for an immoderate stretch of time is not to be held as moderate because conceivably the court that made it may be persuaded at a later time to undo what it had done. *Landis v. North American Co.*, 299 U.S. 248, 257, (1935).

Respondent in his deposition admits that he does not know of any other case where records and/or evidence were lost and/or destroyed. Furthermore, the requirement to file copies of any and all non-Colorado authorities which are cited by petitioner in his pleadings, is imposed only on him but not on litigants in other cases in the state court since WESTLAW computerized research is available and respondent testified that his law clerk is qualified to use WESTLAW and has never encountered any limitation on its use. In addition, University of Colorado Law Library is available a few blocks from the state courthouse and is used by the judges and law clerks of the court. Finally, states are required to have properly functioning courts under I and XIV Amendments.

Thus, claims for declaratory and injunctive relief to require respondent state judge to institute procedures and policies, (a) to prevent loss and/or destruction of records and/or evidence in petitioner's cases in the state court and (b) to obviate the need and requirement for petitioner to file copies of any non-Colorado authority, are meritori-

ous and live since they are unaffected by respondent's rotation from one docket to another within the same court.

CONCLUSION

For these reasons, this petition for certiorari should be granted.

Respectfully submitted,

By_____

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APPENDIX

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MAHINDER S. UBEROI,		)
	Plaintiff-Appellant,	)
v.		)
		)
MURRAY RICHTEL,	A Judge of District Court,	)
	Boulder County, CO.	)
	Defendant-Appellee.	)

Nos. 87-2635
89-1185

ORDER

Filed March 14, 1990

Before HOLLOWAY, Chief Judge, McKAY, LOGAN, SEYMOUR, MOORE, ANDERSON, TACHA, BALDOCK, BRORBY and EBEL, Circuit Judges.

This matter comes on for consideration of appellant's petition for rehearing and suggestion for rehearing en banc in the captioned cause.

Upon consideration whereof, the petition for rehearing is denied by the panel that rendered the decision sought to be reheard.

In accordance with Rule 35(b) of the Federal Rules of Appellate Procedure, the petition for rehearing and suggestion for rehearing en banc were transmitted to all the judges of the court in regular active service. No member on the court having requested that the court be

polled on rehearing en banc, Rule 35, Federal Rules of Appellate Procedure, the suggestion for rehearing en banc is denied.

Entered for the Court

ROBERT L. HOECKER, Clerk

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MAHINDER S. UBEROI,		)
	Plaintiff-Appellant,	)
v.		)
		)
MURRAY RICHTEL,	A Judge of District Court,	)
	Boulder County, CO.	)
	Defendant-Appellee.	)

Nos. 87-2635
89-1185
(D.C. Nos. 87-K-961 & 87-Z-961)
(D. Colo.)

ORDER AND JUDGMENT[1]

Before TACHA, BALDOCK, and BRORBY, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of these appeals. *See* Fed.R.App.P. 34(a); 10th Cir.R. 34.1.9.The cases are therefore ordered submitted without oral argument.

Plaintiff appeals from two orders of the district court, which collectively resulted in dismissal of his action. We affirm.

Plaintiff commenced this action against defendant, a Colorado trial judge, for several alleged violations of his civil rights during state court proceedings before defendant. In addition to damages, plaintiff sought declaratory and injunctive relief.

---

1. This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir.R.36.3.

In the first order appealed, entered October 7, 1987, the district court granted in part defendant's motion to dismiss. The district court fully dismissed the first, third, fifth, sixth, and seventh counts of the complaint and partially dismissed the second and fourth counts, because, in those counts, plaintiff requested review of state court proceedings, sought damages for judicially immune acts, or failed to present a colorable cause of action. The district court refused to dismiss plaintiff's claims regarding seizure of his papers and defendant's alleged statement that plaintiff was bothering the court staff.

The second order appealed, entered May 19, 1989, granted defendant's motion to dismiss the remaining claims as moot. Because defendant had been transferred from the civil to the criminal docket and it was mere speculation that plaintiff would appear before defendant in the future, the district court concluded relief was unavailable. Accordingly, the district court dismissed the complaint.

On appeal, plaintiff argues (1) defendant's unauthorized seizure of plaintiff's papers was a nonjudicial act, and, therefore, defendant does not have judicial immunity against a claim for damages; (2) the district court's ruling that plaintiff sought federal review of a state court judgment is unsupported by the record; (3) the framers of the Constitution intended that a judge be prohibited from refusing to enforce a constitutionally firm statute; (4) the claims for declaratory and injunctive relief to require defendant to institute procedures and policies (a) to prevent loss or destruction of records or evidence in plaintiff's state court cases and (b) to obviate the requirement for plaintiff to file copies of non-Colorado authority are meritorious and not moot, because they are unaffected by defendant's rotation to the criminal docket; (5) defendant's actions unconstitutionally handicap plaintiff's right to petition the courts; (6) defendant's refusal to enforce the Open Records Act is an unconstitutional retaliation against plaintiff's successful lobbying of the Colorado legislature; and (7) this case is not moot because it presents issues capable of repetition yet evading review.

After consideration of the briefs and record on appeal, we conclude that both of the district court orders were proper. Accordingly, we affirm for substantially the reasons stated in the orders.

The judgment of the United States District Court for the District of Colorado is AFFIRMED. Plaintiff's motions to file an amended reply

brief and appendices are granted. The mandate shall issue forthwith.

ENTERED FOR THE COURT
PER CURIAM

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 87-Z-961
MAHINDER S. UBEROI,
Plaintiff,
v.
MURRAY RICHTEL,
Defendant.

ORDER OF DISMISSAL

This matter is before the Court on defendant's Motion to Dismiss. Plaintiff brought this action against Murray Richtel, a Colorado District Court judge, seeking declaratory and injunctive relief as well as costs and attorney's fees. Plaintiff claims defendant violated his constitutional rights by, *inter alia*, failing to enforce the Colorado Open Records Act, preventing plaintiff's meaningful access to Boulder County District Court and denying him equal protection. On October 7, 1988, Judge John L. Kane, Jr., dismissed the first, third, fifth, sixth and seventh claims of plaintiff's Amended Complaint. Defendant moves to dismiss plaintiff's two remaining claims as moot. The matter is fully briefed and oral argument would not materially assist the Court in deciding the issues.

Moot cases may not be adjudicated in federal court. A case is moot when its decision will no longer have an impact upon the interest of the litigants. *DeFunis v. Odegaard*, 416 U.S. 312 (1974). This doctrine derives from Article III's "case or controversy" requirement which proscribes consideration of cases that have no affect upon the parties since this amounts to an impermissible advisory opinion. In the case currently before the Court, the interests of plaintiff will not be affected by granting the injunctive or declaratory relief he seeks.

As his affidavit points out, Judge Richtel is no longer on the active civil docket, but, instead has been transferred to the criminal docket. As a result, the injunctive relief sought by plaintiff is unavailable.

The plaintiff argues that this is a case where the moot matters present issues "capable of repetition yet evading review." *See Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U.S. 498 (1911). *See also Roe v. Wade*, 410 U.S. 113 (1973). The Court concludes, however, that this is not such a case. This is not a situation where the injury is limited in time and will recur in the future. Instead, this is a situation where the defendant is no longer a civil judge and any possibility that the plaintiff will have to make an appearance in front of the defendant in the future is speculative at best. Injunctive relief is therefore inappropriate as there is no continuing adverse effect. *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983); *O'Shea v. Littleton*, 414 U.S. 488 (1974).

Accordingly, it is

ORDERED that defendant's Motion to Dismiss on the grounds that the case is moot is granted. It is

FURTHER ORDERED that all other pending motions are moot. It is

FURTHER ORDERED that plaintiff's second and fourth claims for relief are dismissed as moot. It is

FURTHER ORDERED that plaintiff's Complaint and cause of action are dismissed with prejudice, each party to bear his own costs and attorneys' fees.

DATED at Denver, Colorado, this 19th day of May, 1989.

BY THE COURT:
ZITA L. WEINSHIENK, Judge
United States District Court

TEXT OF CONSTITUTIONAL PROVISIONS INVOLVED

ARTICLE IV, §4

Republican form of government-protection of states. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion: and on application of the legislature or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE VI, §3

Oath to support constitution. The senators and representatives before mentioned, and the members of the several legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation, to support this constitution: but no religious test shall ever be required as a qualification to any office or public trust under the United States.

AMENDMENT I

Freedom of religion, speech and press-right of petition. Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

AMENDMENT IV

Unreasonable search and seizure. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT XIV §1

Citizenship defined-privileges of citizens. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.